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PATENT APPLICATION

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IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Edgar CIRCENIS, et al.

Confirmation No.: 8859

Application No.: 10/045,149

Examiner: WU, Rutao

Filing Date: January 15, 2002

Group Art Unit: 3628

Title: SOFTWARE PAY-PER-USE PRICING

Mail Stop Appeal Brief - Patents
Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF REPLY BRIEF

Transmitted herewith is the Reply Brief with respect to the Examiner's Answer mailed on February 21, 2007.

This Reply Brief is being filed pursuant to 37 CFR 1.193(b) within two months of the date of the Examiner's Answer.

(Note: Extensions of time are not allowed under 37 CFR 1.136(a))

(Note: Failure to file a Reply Brief will result in dismissal of the Appeal as to the claims made subject to an expressly stated new ground rejection.)

No fee is required for filing of this Reply Brief.

If any fees are required please charge Deposit Account 08-2025.

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Respectfully submitted,

By _____

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Appl. No. : 10/045,149
Applicant : Edgar CIRCENIS, et al.
Filed : January 15, 2002
Title : SOFTWARE PAY-PER-USE PRICING
TC/A.U. : 3639
Examiner : WU, RUTAO
Docket No. : 10016873-1
Customer No. : 022879

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REPLY BRIEF UNDER 37 C.F.R. §41.37

I. RESPONSE TO EXAMINER'S ANSWER

The Examiner's Answer fails to overcome the reasons for patentability set forth in the Appellants' Appeal Brief, filed November 8, 2006. In this Reply Brief, the Appellants' respond to the Examiner's Answer and provide additional clarification and reasons why the cited reference *Halliday* is insufficient to anticipate or render the pending claims obvious.

Rejection of Claims 33-46 and 48-65 Under 35 U.S.C. § 102(e) Must Fail Because Halliday Fails to Describe Each and Every Element of the Claims

Claims 33-46 and 48-65 are rejected under 35 U.S.C. § 102(e) as being anticipated by *Halliday*. However, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 Fed. Cir. 1987). *Halliday* does not describe each and every element as set forth in claims 33-46 and 48-65.

A. Halliday Does Not Describe a Metrics Gathering Tool Associated with Each of the PPU Software Products - Claims 33-51

As set forth in the Appeal Brief, *Halliday* does not teach:

a metrics gathering tool associated with each of the one or more PPU software products, wherein each metrics gathering tool monitors and measures usage data for its associated one or more products,

as recited in claim 33 (emphasis added), or

measuring usage data associated with one or more PPU software products using a metrics gathering tool at a first computer having one or more PPU software products, wherein one metrics gathering tool is associated with each of the one or more PPU software products,

as recited in claims 52 and 59 (emphasis added). As set forth in the Answer, the Examiner asserts that the "application library having metering means" is the metrics gathering tool (see page 14 of Examiner's Answer). *Halliday*, however, discloses that each client application has its own application library having metering means (see FIG. 2, which illustrates "Client Library 2C" and "Client Application 2A" as part of Application 4C). Indeed, *Halliday* discloses that this is "an important part of the present invention," paragraph [0062]:

The client library 2C is known ... as a software library that is linked to client application 2A ... client application 2A has built into it a reporting function that will report to the library 2C all usage of features included or implemented in the client application. The library is responsible for reporting ... such usage to the metering monitor

(emphasis added). Consequently, *Halliday* teaches that each application library having metering means is included in a single client application and that each client application has its own application library. In other words, *Halliday* describes a one-to-one correspondence of application library having metering means and client application.

Turning to FIG. 4, we see a client computer 1A includes a plurality of client applications 4C. Since each client application 4C has its own application library having metering means, as shown in FIG. 2 and discussed above, an application library having metering means cannot be the claimed “metrics gathering tool associated with each of the one or more PPU software products [on the first computer],”^a as recited in claim 33. Likewise, an application library having metering means cannot be the claimed “one metrics gathering tool associated with each of the one or more PPU software products,” as recited in claims 52 and 59. To meet these claim features, *Halliday* would have to describe a one-to-more-than-one correspondence of application library having metering means and client applications. Instead, as shown in FIG. 4, *Halliday* describes a plurality of client applications each with their own application library having metering means. None of these application libraries having metering means is described by *Halliday* as being associated with each of the one or more PPU software products shown in FIG. 4. Consequently, *Halliday* fails to anticipate independent claims 33, 52 and 59. Dependent claims 34-46, 48-51, 53-58 and 60-65 are not anticipated for at least these reasons.

B. Halliday Fails to Describe Both A Utility Metering Appliance and Usage Collection and Billing System

Since the Examiner has maintained his rejections of the pending claims, it is necessary to further elucidate the differences between the claimed invention and *Halliday*. As noted above, in order to anticipate the claimed invention, *Halliday* must expressly or inherently describe each and every element as set forth in the claims. As the Answer improperly relies on the “metering server” to describe both the “utility metering appliance” and the “usage collection and billing system” recited in claim 33, it is clear that *Halliday* does not describe each and every element as set forth in the claims.

Claim 33 recites a utility metering appliance that “receives the collected usage data from the software metering agents residing on other computers connected to the utility metering appliance.” Claim 33 also recites a usage collection and billing system that

^a Claim 33 recites “a first computer having one or more PPU software products.” Therefore, the recited “the one or more PPU software products” are the one or more PPU software products on the first computer.

"periodically receives the collected usage data from the utility metering appliance and processes the collected usage data to generate billing information for PPU products on the plurality of computers connected to the utility metering appliance." The Answer cites to paragraph [0051] as purportedly describing the utility metering appliance and paragraph [0058] as purportedly describing the usage collection and billing system (see page 4 of Answer). However, both paragraphs [0051] and [0058] describe the "metering server" of *Halliday*. Specifically, paragraph [0051] states that the metering server is a "computer program connected to a set of metering monitors [and] is responsible for collating tool usage information and applying this collated information in the form of credit deductions." Paragraph [0058] states that on "the metering server, usage reports are compared to a tariff sheet for the user and the account credit value is reduced by an amount as determined by the rate and length of use of a feature." Consequently, the Examiner is relying on the description of a single element to attempt to show that *Halliday* describes two elements of the claimed invention.

However, the law requires that the "identical invention must be shown in as complete detail as is contained in the ... claim." Richardson v. Suzuki Motor Co., 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim. In re Bond, 15 USPQ2d 1566 (Fed. Cir. 1990). Therefore, the single metering server cannot be relied upon as showing a description of both the "utility metering appliance" and the "usage collection and billing system." If the metering server is "usage collection and billing system," it cannot, therefore, be the "utility metering appliance," and vice-versa. An examination of *Halliday* shows that it does not describe elements corresponding to both the "utility metering appliance" and the "usage collection and billing system." Consequently, *Halliday* fails to anticipate independent claims 33, 52 and 59.^b Dependent claims 34-46, 48-51, 53-58 and 60-65 are not anticipated for at least these reasons.

C. Halliday Fails to Describe Numerous Features Set Forth in the Dependent Claims As Well

The Examiner's Answer also maintains improper rejections of dependent claims which must be addressed. As noted above, in order to anticipate a claim, *Halliday* must

^b Claims 52 and 59 recite steps corresponding to the "utility metering appliance" and the "usage collection and billing system." The Answer mis-relies on the same paragraphs [0051] and [0058] for allegedly describing these steps. Consequently, for the same reasons set forth herein, *Halliday* does not anticipate claims 52 and 59.

expressly or inherently describe each element of the claim. This requirement is equally applicable to the dependent claims.

1. Halliday Fails to Describe the Claimed Registry

Dependent claim 34 recites:

a registry for identifying all of the one or more PPU software products registered with the software metering agent on the first computer, wherein the registry includes identifiers for all of the one or more PPU software products registered with the software metering agent on the first computer and a pathname for each software metering agent associated with each of the one or more PPU software products.

Dependent claims 53 and 60 similarly recite “a registry.” The Answer cites to paragraphs [0056] and [0068] as showing that *Halliday* describes the claimed registry. However, an examination of these paragraphs shows that they do not describe the claimed registry. Paragraph [0056], which is discussed above, describes the software packages that include a client application and application library having metering means. There is no mention of a registry or anything equivalent thereto. Paragraph [0068] describes FIG. 4, which is discussed above and which illustrates the client computer on which a plurality of client applications 4C are shown. While paragraph [0068] does describe a “configuration file 4D,” there is not disclosure or suggestion that the configuration file 4D is a registry or at all similar to a registry. Indeed, later discussions of the configuration file 4D shows that it is a standard configuration file that includes system parameters, including communication channels, that is read in by a applications and which enable the applications to run (see, *e.g.*, paragraphs [0074], [0075], and [0077]). There is no description of the configuration file identifying all of the one or more PPU software products registered with the software metering agent on the first computer. Consequently, *Halliday* fails to anticipate claims 34, 53 and 60. Claims 35, 54 and 61, which depend on claims 34, 53 and 60, are not anticipated for at least these same reasons.

2. Halliday Fails to Describe Reading the Pathname in the Registry to Access the Associated Metrics Gathering Tool

Dependent claim 35 recites that “the software metering agent reads the pathname in the registry to access the associated metrics gathering tool.” Dependent claims 53 and 60 similarly recite “reading the pathname in the registry to access the metrics gathering tool associated with the PPU software product.” The Answer cites to paragraph [0062] as allegedly describing this claimed feature. Paragraph [0062], which is discussed above, merely describes FIG. 2 and the illustration of the software package therein. There is no

discussion of reading a pathname for an associated metrics gathering tool from a registry. Indeed, nowhere does *Halliday* describe this feature. Therefore, claims 35, 53 and 60 are not anticipated by *Halliday*.

3. Halliday Fails to Describe The Utility Metering Appliance Resides on each of the Plurality of Computers

Dependent claim 38 recites “wherein the utility metering appliance is a software program residing on each of the plurality of computers.” The Answer cites two paragraphs [0051] and [0052] as allegedly describing this claimed feature. As discussed above, paragraph [0051] describes the metering server, which the Examiner relies upon as being the utility metering appliance. Although the metering server is described as being a computer program, there is no description of the metering server residing on each of a plurality of computers. Paragraph [0052] describes the metering monitor. As noted in the Appeal Brief, and set forth in the Answer, the metering monitor is relied upon by the Examiner as being the software metering agent. Further, the Examiner relies upon the metering server as being the utility metering appliance. The metering monitor, therefore, cannot be the utility metering appliance. Moreover, nowhere does paragraph [0052], or any part of *Halliday*, describe the metering server as residing on each of a plurality of computers. Consequently, *Halliday* fails to anticipate claim 38.

4. Halliday Fails to Describe that the Usage Data Includes a Number of Input/Output Transactions Processed

Dependent claim 45 recites “wherein the usage data includes a number of input/output (I/O) transactions processed in a given time period.” The Answer cites to paragraph [0064] as allegedly describing this claimed feature. Paragraph [0064] describes allowing the end user to pay for services rendered and to monitor the progress of running applications and history of jobs previously run. There is no description of the usage data including a number of I/O transactions processed in a given time period. Indeed, nowhere does *Halliday* describe this feature. Therefore, *Halliday* fails to anticipate claim 38.

5. Halliday Fails to Describe that the Usage Data is Based on any of the Items Listed in Claim 46

Claim 46 recites:

wherein the usage data associated with the one or more of the PPU software products is based on one or more of the following: number of users of the system, number of users of a given type, software license level, number of transactions processed per minute, total number of transactions processed, number of files created, sizes of files created, number of keystrokes processed,

number of times a specific software product feature has been accessed and number of computers on the system using one or more of the PPU software products.

The Answer cites to paragraph [0064] as allegedly describing this claimed feature. As noted above, paragraph [0064] describes allowing the end user to pay for services rendered and to monitor the progress of running applications and history of jobs previously run. Paragraph [0064] does not describe the usage data associated with the PPU software products being based on any of the items listed in claim 46. Indeed, nowhere does *Halliday* describe this feature. Therefore, claim 46 is not anticipated by *Halliday*.

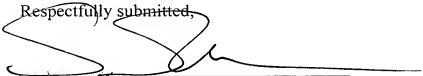
II. CONCLUSION

For at least the reasons set forth above, claims 33-46 and 48-65 are not anticipated by *Halliday*.^c For at least the same reasons set forth above regarding independent claim 33, dependent claim 47 is not rendered obvious by *Halliday*. Therefore, Appellants respectfully request the withdrawal of the rejections and allowance of the pending claims.

No fees are believed to be due. However, should there be any additional fees required, please charge any fees required to **Deposit Account 08-2025** pursuant to 37 CFR 1.25.

Respectfully submitted,

Date: **April 23, 2007**



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^c For the sake of brevity, Appellants have not repeated the arguments made in the Appeal Brief, which Appellant maintains and which has not been overcome.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Rejection of Claims 33-46 and 48-65 Under 35 U.S.C. § 102(e) Must Fail Because Halliday Fails to Describe Each and Every Element of the Claims

Claims 33-46 and 48-65 are rejected under 35 U.S.C. § 102(e) as being anticipated by *Halliday*. However, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 Fed. Cir. 1987). *Halliday* does not describe each and every element as set forth in claims 33-46 and 48-65.

A. Halliday Does Not Describe a Metrics Gathering Tool Associated with Each of the PPU Software Products - Claims 33-51

As set forth in the Appeal Brief, *Halliday* does not teach:

a metrics gathering tool associated with each of the one or more PPU software products, wherein each metrics gathering tool monitors and measures usage data for its associated one or more products,

as recited in claim 33 (emphasis added), or

measuring usage data associated with one or more PPU software products using a metrics gathering tool at a first computer having one or more PPU software products, wherein one metrics gathering tool is associated with each of the one or more PPU software products,

as recited in claims 52 and 59 (emphasis added). As set forth in the Answer, the Examiner asserts that the "application library having metering means" is the metrics gathering tool (see page 14 of Examiner's Answer). *Halliday*, however, discloses that each client application has its own application library having metering means (see FIG. 2, which illustrates "Client Library 2C" and "Client Application 2A" as part of Application 4C). Indeed, *Halliday* discloses that this is "an important part of the present invention," paragraph [0062]:

The client library 2C is known ... as a software library that is linked to client application 2A ... client application 2A has built into it a reporting function that will report to the library 2C all usage of features included or implemented in the client application. The library is responsible for reporting ... such usage to the metering monitor

(emphasis added). Consequently, *Halliday* teaches that each application library having metering means is included in a single client application and that each client application has its own application library. In other words, *Halliday* describes a one-to-one correspondence of application library having metering means and client application.

Turning to FIG. 4, we see a client computer 1A includes a plurality of client applications 4C. Since each client application 4C has its own application library having metering means, as shown in FIG. 2 and discussed above, an application library having metering means cannot be the claimed “metrics gathering tool associated with each of the one or more PPU software products [on the first computer],”¹⁸ as recited in claim 33. Likewise, an application library having metering means cannot be the claimed “one metrics gathering tool associated with each of the one or more PPU software products,” as recited in claims 52 and 59. To meet these claim features, *Halliday* would have to describe a one-to-more-than-one correspondence of application library having metering means and client applications. Instead, as shown in FIG. 4, *Halliday* describes a plurality of client applications each with their own application library having metering means. None of these application libraries having metering means is described by *Halliday* as being associated with each of the one or more PPU software products shown in FIG. 4. Consequently, *Halliday* fails to anticipate independent claims 33, 52 and 59. Dependent claims 34-46, 48-51, 53-58 and 60-65 are not anticipated for at least these reasons.

B. Halliday Fails to Describe Both A Utility Metering Appliance and Usage Collection and Billing System

Since the Examiner has maintained his rejections of the pending claims, it is necessary to further elucidate the differences between the claimed invention and *Halliday*. As noted above, in order to anticipate the claimed invention, *Halliday* must expressly or inherently describe each and every element as set forth in the claims. As the Answer improperly relies on the “metering server” to describe both the “utility metering appliance” and the “usage collection and billing system” recited in claim 33, it is clear that *Halliday* does not describe each and every element as set forth in the claims.

Claim 33 recites a utility metering appliance that “receives the collected usage data from the software metering agents residing on other computers connected to the utility metering appliance.” Claim 33 also recites a usage collection and billing system that

¹⁸ Claim 33 recites “a first computer having one or more PPU software products.” Therefore, the recited “the one or more PPU software products” are the one or more PPU software products on the first computer.

“periodically receives the collected usage data from the utility metering appliance and processes the collected usage data to generate billing information for PPU products on the plurality of computers connected to the utility metering appliance.” The Answer cites to paragraph [0051] as purportedly describing the utility metering appliance and paragraph [0058] as purportedly describing the usage collection and billing system (see page 4 of Answer). However, both paragraphs [0051] and [0058] describe the “metering server” of *Halliday*. Specifically, paragraph [0051] states that the metering server is a “computer program connected to a set of metering monitors [and] is responsible for collating tool usage information and applying this collated information in the form of credit deductions.” Paragraph [0058] states that on “the metering server, usage reports are compared to a tariff sheet for the user and the account credit value is reduced by an amount as determined by the rate and length of use of a feature.” Consequently, the Examiner is relying on the description of a single element to attempt to show that *Halliday* describes two elements of the claimed invention.

However, the law requires that the “identical invention must be shown in as complete detail as is contained in the ... claim.” Richardson v. Suzuki Motor Co., 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim. In re Bond, 15 USPQ2d 1566 (Fed. Cir. 1990). Therefore, the single metering server cannot be relied upon as showing a description of both the “utility metering appliance” and the “usage collection and billing system.” If the metering server is “usage collection and billing system,” it cannot, therefore, be the “utility metering appliance,” and vice-versa. An examination of *Halliday* shows that it does not describe elements corresponding to both the “utility metering appliance” and the “usage collection and billing system.” Consequently, *Halliday* fails to anticipate independent claims 33, 52 and 59.^b Dependent claims 34-46, 48-51, 53-58 and 60-65 are not anticipated for at least these reasons.

C. Halliday Fails to Describe Numerous Features Set Forth in the Dependent Claims As Well

The Examiner’s Answer also maintains improper rejections of dependent claims which must be addressed. As noted above, in order to anticipate a claim, *Halliday* must

^b Claims 52 and 59 recite steps corresponding to the “utility metering appliance” and the “usage collection and billing system.” The Answer mis-relies on the same paragraphs [0051] and [0058] for allegedly describing these steps. Consequently, for the same reasons set forth herein, *Halliday* does not anticipate claims 52 and 59.

expressly or inherently describe each element of the claim. This requirement is equally applicable to the dependent claims.

1. Halliday Fails to Describe the Claimed Registry

Dependent claim 34 recites:

a registry for identifying all of the one or more PPU software products registered with the software metering agent on the first computer, wherein the registry includes identifiers for all of the one or more PPU software products registered with the software metering agent on the first computer and a pathname for each software metering agent associated with each of the one or more PPU software products.

Dependent claims 53 and 60 similarly recite “a registry.” The Answer cites to paragraphs [0056] and [0068] as showing that *Halliday* describes the claimed registry. However, an examination of these paragraphs shows that they do not describe the claimed registry. Paragraph [0056], which is discussed above, describes the software packages that include a client application and application library having metering means. There is no mention of a registry or anything equivalent thereto. Paragraph [0068] describes FIG. 4, which is discussed above and which illustrates the client computer on which a plurality of client applications 4C are shown. While paragraph [0068] does describe a “configuration file 4D,” there is not disclosure or suggestion that the configuration file 4D is a registry or at all similar to a registry. Indeed, later discussions of the configuration file 4D shows that it is a standard configuration file that includes system parameters, including communication channels, that is read in by a applications and which enable the applications to run (see, e.g., paragraphs [0074], [0075], and [0077]). There is no description of the configuration file identifying all of the one or more PPU software products registered with the software metering agent on the first computer. Consequently, *Halliday* fails to anticipate claims 34, 53 and 60. Claims 35, 54 and 61, which depend on claims 34, 53 and 60, are not anticipated for at least these same reasons.

2. Halliday Fails to Describe Reading the Pathname in the Registry to Access the Associated Metrics Gathering Tool

Dependent claim 35 recites that “the software metering agent reads the pathname in the registry to access the associated metrics gathering tool.” Dependent claims 53 and 60 similarly recite “reading the pathname in the registry to access the metrics gathering tool associated with the PPU software product.” The Answer cites to paragraph [0062] as allegedly describing this claimed feature. Paragraph [0062], which is discussed above, merely describes FIG. 2 and the illustration of the software package therein. There is no

discussion of reading a pathname for an associated metrics gathering tool from a registry. Indeed, no where does *Halliday* describe this feature. Therefore, claims 35, 53 and 60 are not anticipated by *Halliday*.

3. Halliday Fails to Describe The Utility Metering Appliance Resides on each of the Plurality of Computers

Dependent claim 38 recites “wherein the utility metering appliance is a software program residing on each of the plurality of computers.” The Answer cites two paragraphs [0051] and [0052] as allegedly describing this claimed feature. As discussed above, paragraph [0051] describes the metering server, which the Examiner relies upon as being the utility metering appliance. Although the metering server is described as being a computer program, there is no description of the metering server residing on each of a plurality of computers. Paragraph [0052] describes the metering monitor. As noted in the Appeal Brief, and set forth in the Answer, the metering monitor is relied upon by the Examiner as being the software metering agent. Further, the Examiner relies upon the metering server as being the utility metering appliance. The metering monitor, therefore, cannot be the utility metering appliance. Moreover, nowhere does paragraph [0052], or any part of *Halliday*, describe the metering server as residing on each of a plurality of computers. Consequently, *Halliday* fails to anticipate claim 38.

4. Halliday Fails to Describe that the Usage Data Includes a Number of Input/Output Transactions Processed

Dependent claim 45 recites “wherein the usage data includes a number of input/output (I/O) transactions processed in a given time period.” The Answer cites to paragraph [0064] as allegedly describing this claimed feature. Paragraph [0064] describes allowing the end user to pay for services rendered and to monitor the progress of running applications and history of jobs previously run. There is no description of the usage data including a number of I/O transactions processed in a given time period. Indeed, nowhere does *Halliday* describe this feature. Therefore, *Halliday* fails to anticipate claim 38.

5. Halliday Fails to Describe that the Usage Data is Based on any of the Items Listed in Claim 46

Claim 46 recites:

wherein the usage data associated with the one or more of the PPU software products is based on one or more of the following: number of users of the system, number of users of a given type, software license level, number of transactions processed per minute, total number of transactions processed, number of files created, sizes of files created, number of keystrokes processed,

number of times a specific software product feature has been accessed and number of computers on the system using one or more of the PPU software products.

The Answer cites to paragraph [0064] as allegedly describing this claimed feature. As noted above, paragraph [0064] describes allowing the end user to pay for services rendered and to monitor the progress of running applications and history of jobs previously run. Paragraph [0064] does not describe the usage data associated with the PPU software products being based on any of the items listed in claim 46. Indeed, nowhere does *Halliday* describe this feature. Therefore, claim 46 is not anticipated by *Halliday*.

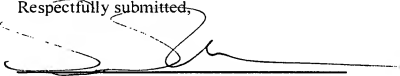
II. CONCLUSION

For at least the reasons set forth above, claims 33-46 and 48-65 are not anticipated by *Halliday*.⁵ For at least the same reasons set forth above regarding independent claim 33, dependent claim 47 is not rendered obvious by *Halliday*. Therefore, Appellants respectfully request the withdrawal of the rejections and allowance of the pending claims.

No fees are believed to be due. However, should there be any additional fees required, please charge any fees required to **Deposit Account 08-2025** pursuant to 37 CFR 1.25.

Respectfully submitted,

Date: April 23, 2007



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⁵ For the sake of brevity, Appellants have not repeated the arguments made in the Appeal Brief, which Appellant maintains and which has not been overcome.